IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1398 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAMJUBEN KHIMJIBHAI

Versus

JIVRAJ RAGHUBHAI

Appearance:

MR YOGESH S LAKHANI for Petitioner

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/04/2001

ORAL JUDGEMENT

Heard Mr. Y.S.Lakhani learned advocate for the appellant.

1. This is an appeal under Section 96 of the Civil Procedure Code,1907 (for short "the Code") at the

instance of appellant/original plaintiff of Special Civil Suit No. 42 of 1995 dispossed of by learned Civil Judge (S.D.), Morbi, District - Rajkot vide judgement and order dated 30.1.1999; whereby the suit of the appellant/plaintiff is dismissed with costs.

2. The appellant/plaintiff had filed Special Civil Suit No. 42 of 1995 against the present respondent nos. 1 and 2 to claim 1/3 share in the immovable property of deceased father of respondents one Raghubhai Govabhai. The appellant/plaintiff has described the property of the agricultural land in para.2 of the plaint which consist of Survey No. 225, 285, 317 part and 307 part, admeasuring 23 Acre and 18 Guntha of Village - Virpar. It is averred and contended by the appellant as plaintiff of the said suit that appellant - Bai Samjuben Khimjibhai is uterine sister of respondent nos. 1 and 2 Jivraj Raghubhai and Bhanji Raghubhai respectively who are the original defendants of the said Special Civil Suit No. 42 of 1995. According to appellant/plaintiff her mother - Rambha Bai earlier married to one Ladhabhai Rajpara and out of the said wedlock, appellant as well as respondent no.2 Bhanji Raghubhai are born. That thereafter, on demise of said Ladhabhai Rajpara, the mother of appellant - Rambha Bai entered into marriage with Raghubhai Govabhai and out of the said wedlock, respondent no.1 Jivraj Raghubhai is born. On the said facts, plaintiff/appellant has contended that she being uterine sister of respondent nos.1 and 2, is also heir of deceased Raghubhai Govabhai and is entitled to the share in the property of deceased Raghubhai Govabhai. It is further averred and contended that initially the father of deceased Raghubhai one Govabhai Hirjibhai was holding the suit property and he had two sons; one deceased Raghubhai and another deceased Tapubhai. That deceased Tapubhai having no issue; on his death, the entire property of deceased Govabhai devolved on deceased Raghubhai Govabhai and as such, deceased Raghubhai Govabhai was holding ancestral property which has come under the control of present respondent nos.1 and 2 on demise of deceased Raghubhai Govabhai. The appellant/plaintiff has averred and alleged that the respondent nos.1 and 2 have deprived the appellant/plaintiff of her legitimate share in the ancestral property of deceased Raghubhai Govabhai her father and have partitioned the property in between them and are enjoying the said properties despite the demand of the appellant/plaintiff to partition the property and to allott her share to her which comes to 7 Acre and 13 guntha of land and thereby, appellant/plaintiff has filed the said Special Civil Suit No. 42 of 1995 in the Court

of learned Civil Judge (S.D.), Morbi, District - Rajkot.

3. That the respondent nos.1 and 2 having been served with the summons had appeared in the proceedings of Special Civil Suit No. 42 of 1995 and have resisted the suit by filing written statement Exh.16. That apart from denial of the allegations, it is asserted on behalf of present respondents in the written statement that suit property is not ancestral property of deceased Raghubhai Govabhai, but it is the self-acquired property of deceased Raghubhai Govabhai and deceased Raghubhai Govabhai during his life time in the year 1960 has divided the property between respondent nos. 1 and 2 and as such, respondent nos.1 and 2 are holding and enjoying the said property as the sole owner of the said property. That any right to have a share of the plaintiff in the property of deceased Raghubhai Govabhai as a heir is denied and the contention is also raised that suit is barred by Law of Limitation because within the knowledge of plaintiff, the suit property was exclusively held and enjoyed by the respondent nos.1 and 2 since 1960. While the appellant/plaintiff has filed the suit in the year 1995.

4. That the Trial Court on the said pleadings has raised issues and recorded the evidence. It may be noted that except examining the power of attorney holder of the plaintiff vide Exh.26 and witness Valjibhai Veljibhai Exh.33 as well as Gangaram Thobhan Exh.34, no other evidence has been led on behalf of appellant/plaintiff, much less, no documentary evidence has been produced. It may be noted that in a suit for partition of agricultural land though it is obligatory on the appellant/plaintiff to produce revenue record along with plaint, nothing is produced by the appellant/plaintiff in the proceedings of said Special Civil Suit No. 42 of 1995. However, present respondent nos. 1 and 2 as defendants of the said suit have produced the entries of revenue record of the suit land vide Exh.40 to Exh.48.

5. That on appreciation of the facts emerging from the documentary evidence and oral evidence led by the parties, the Trial Court has come to the conclusion and in my opinion has rightly come to the conclusion that the appellant/plaintiff has failed to prove the suit property as ancestral property of deceased Govabhai Hirjibhai. Further, the Trial Court has held that plaintiff has failed to prove that plaintiff has 1/3 share in the suit property and it is also held that it is proved that the suit property is self-acquired property of deceased Raghubhai Govabhai. A finding is also given that the

suit as filed is time barred and plaintiff is not entitled to any relief as prayed for. On the basis of said findings, the Trial Court has dismissed the suit.

6. On perusal of the original record and proceedings, it transpires from the revenue record that deceased Raghubhai Govabhai was the original holder of suit land and since 1960 during his life time the suit property was divided in two part and was given to respondent nos.1 and 2 respectively. In the absence of any other contrary evidence, the assessment made of the evidence produced on record by the Trial Court and the conclusion drawn on the basis of said assessment while giving the findings, in my opinion do not merit any interference by the Appellate Court. It is also noteworthy that learned advocate appearing on behalf of appellant/plaintiff could not satisfy this Court on proposition of law that under Schedule-I of Hindu Succession Act read with Section 8 whether uterine sister falls within Clause-I or Clause-II of the heir of deceased father. That even if it is held that deceased Raghubhai Govabhai was holding the ancestral property, it would not make any difference as appellant/plaintiff being uterine sister has no share whatsoever in the property of deceased Raghubhai Govabhai either ancestral or self-acquired. Under the circumstances, in my opinion reading the impugned judgement in its overall perspective is not assailable and, therefore, present appeal cannot be tenable at law. Hence, the appeal stands disposeed of as rejected summarily.

(A.K.Trivedi,J.)

(vipul)